

MEMORANDUM OF LAW

DATE: August 8, 1986

TO: Bob Stinson, Field Operations, San Diego
Police Department
FROM: City Attorney
SUBJECT: Admission Refusal by County Mental Health
Hospital Under Welfare and Institutions Code
Section 5150; Duties and Responsibilities
Concerning

By memorandum dated April 10, 1986, you stated the San Diego Police Department is experiencing difficulties in the admission of persons to the County Mental Health Hospital pursuant to the provisions of section 5150 of the California Welfare and Institutions Code. You noted that refusal of a subject is sometimes due to physical space limitation. Your memorandum expressed concern about the duties, obligations and responsibilities that may arise when a person is refused admission to the County Mental Health Hospital and you posed the following questions:

1. Once a person has been taken into police custody under Welfare and Institutions Code section 5150, what are the obligations of the County Mental Health facility? Must they accept the person, or are they legally allowed to refuse admission?
2. If the County Mental Health facility does have the right to refuse admission to a violent, unstable person, presumably because the behavior is not a psychological manifestation, what is the Department's liability and obligation regarding the disposition of that person?
3. If it is the officer's opinion that the subject is physically dangerous, but is not accepted at the County Mental Health facility, can he just release him?

To answer your first question, the forerunner of Welfare and Institutions Code section 5150 was Section 5050.3 which used the

same permissive "may" in describing the procedure for placing a mentally disabled person in a mental health facility. In construing the previous section, the Attorney General ruled that the institution has discretion over whether or not an individual is to be admitted. 43 Cal. Op. Att'y Gen. 7 (1964). Since Section 5150 maintains this permissive language, we believe the same construction would be given to its provisions.

It is well-established that in the absence of a statute, a hospital has no duty to accept a patient. *Costa v. Regents of University of California*, 116 Cal.App.2d 445, 460 (1953). Welfare and Institutions Code section 5150 does not impose such a duty; it provides that a person taken into custody "may" be placed in a facility designated under that statute. Section 15, which governs interpretation of the Welfare and Institutions Code, provides that the term "shall" is mandatory and "may" permissive. The courts have reiterated and emphasized this interpretation by holding that use of the word "may" in statutes dealing with the public health confers discretion upon the agencies concerned. *Jones v. Czapkay*, 182 Cal.App.2d 192, 205 (1960).

Clearly, County Mental Health has the power to consider the application of an officer taking a person into custody and determine in its discretion whether such person should be admitted. Such discretion should be exercised by a qualified person representing County Mental Health. 43 Cal. Op. Att'y Gen. 7 at 9 (1964). It is also noted that after a person is admitted pursuant to section 5150, the person in charge of the facility could release such a person at any time upon determining that proper service could be provided without detention. Welfare and Institutions Code section 5152. While a mental health official may decline to admit a person in need of mental health services, he or she is under a duty to offer "all available alternate services" Welfare and Institutions Code section 5150.3. Hence, an officer concerned about the state of a person can insist upon a referral of alternate treatment where available.

The second question concerns the Police Department's obligation and liability, if any, on the disposition of a person denied admission to County Mental Health facility under section 5150 of the Welfare and Institutions Code. Public employees, including police officers, have immunity for any injury resulting from determining whether to confine a person for mental illness. Government Code section 856; *Johnson v. Los Angeles County*, 143 Cal.App.3d 298, 314 (1983).

The apprehending agency has no duty with regard to the further care or custody of the person apprehended and refused admission to a mental health facility; but it may arrange for transportation back to his or her residence or some other facility for further care if requested. It would be proper for the apprehending agency to set policy regarding the authorization of such transportation. 43 Cal. Op. Att'y Gen. 7 at 9.

The third question posed a hypothetical situation in which a

person is denied admission by the County Mental Health facility but in the officer's opinion the subject is "physically dangerous." The question arising out of that situation is whether the officer can "just release him." As previously detailed, qualified persons in a county or state facility may refuse admission to any persons presented to them. California Welfare and Institutions Code section 5150. If admission is declined, qualified officials have a duty to offer "all available alternate services. . . ." California Welfare and Institutions Code section 5150.3. If admission is declined and no alternate services are provided, the officer should release a person in his custody unless there are specific articulable facts providing grounds for arrest. As an alternative to immediate release, the officer could arrange for the subject's transportation back to his or her residence or some other facility for further care if requested. The apprehending agency may furnish additional guidance by setting policy regarding the authorization of such transportation.

JOHN W. WITT, City Attorney

By

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